

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CLEAN WATER ACTION,)	
)	
Plaintiff)	
)	
v.)	CIVIL ACTION NO.
)	3:11-cv-30152-MAP
)	
BERKSHIRE CONCRETE CORP.,)	
)	
Defendant)	

PROPOSED ORDER OF MODIFICATION OF CONSENT DECREE

PONSOR, D.J.

WHEREAS, on January 14, 2013, the Court entered the Consent Decree resolving this action;

WHEREAS, by the terms of the Consent Decree, the Court retained jurisdiction over this matter and allowed this action to be reopened for the purpose of enabling the parties to the Consent Decree to apply to the Court for any further order that may be necessary to construe, carry out, enforce compliance and/or resolve any dispute regarding the terms or conditions of this Consent Decree;

WHEREAS, Plaintiff Clean Water Action ("Clean Water Action") and Defendant Berkshire Concrete Corp. ("BCC") (together, the "Parties") have jointly moved for modification

of Paragraphs 2, 3 and 4 of the Consent Decree, subject to the review of the United States, to effectuate the underlying purpose of the Parties to the Consent Decree to resolve this action by benefiting the water quality in the Hoosic River watershed through conveyance and expanded protection of land in and near the Chalet Wildlife Management Area;

WHEREAS, this Proposed Order of Modification of Consent Decree shall be submitted to the United States Department of Justice for the 45 day statutory review period, pursuant to 33 U.S.C. § 1365(c).

NOW THEREFORE IT IS HEREBY STIPULATED BETWEEN THE PARTIES, AND ORDERED AND DECREED BY THE COURT, AS FOLLOWS:

MITIGATION, FEES AND COSTS

1. Paragraph 3 of the Consent Decree is hereby modified as follows--:

As mitigation of the violations alleged in Clean Water Action's Notice Letters and First Amended Complaint, and in order to benefit water quality in the Hoosic River watershed,

(a) BCC shall, within sixty days of the Effective Date of this Order (the "Modification Order"), convey to the Commonwealth of Massachusetts, acting through its Department of Fish and Game (the "Commonwealth"), title in fee simple to the approximately 20 acres of real property described in the deed recorded with the Berkshire County Registry of Deeds in Book 857, Page 855, which deed appears as Exhibit D to the Consent Decree. Said conveyance shall be on such terms and conditions, as may be acceptable to the Commonwealth, that will require maintenance of such real property in its condition existing as of the date of entry of the Modification Order, subject to future improvements to promote and enhance public access to and enjoyment of recreation, sightseeing, wildlife observation and/or other interactions with the natural environment consistent with protection of the Hoosic River watershed. In addition, upon

presentation of an invoice from the Commonwealth's title counsel, BCC shall pay said counsel's fees up to \$2500 for the title report required by the Commonwealth in connection with this conveyance, which sum shall be applied to the credit of the Commonwealth. A copy of the deed conveying said real property, and a copy of the payment, shall be provided to Clean Water Action.

(b) Within sixty days of the Effective Date of the Modification Order, BCC shall surrender and convey to the Commonwealth any and all right, title, and interest it has in the real property located off Gulf Road in Lanesborough, Massachusetts, containing approximately thirty-four acres bounded on three sides by the DFW's Chalet Wildlife Management Area and having a present assessed value of \$74,900.00, which property appears under BCC's ownership as Lot 17 on the Lanesborough, Massachusetts Assessor's Map 247. Said conveyance shall be on such terms and conditions, as may be acceptable to the Commonwealth, that will require maintenance of such real property in its condition existing as of the date of entry of the Modification Order, subject to future improvements to promote and enhance public access to and enjoyment of recreation, sightseeing, wildlife observation and/or other interactions with the natural environment consistent with protection of the Hoosic River watershed. A copy of the deed conveying said real property shall be provided to Clean Water Action.

2. Paragraph 4 of the Consent Decree is hereby modified as follows--:

As further mitigation of the violations alleged in Clean Water Action's Notice Letters and First Amended Complaint, and in order to benefit water quality in the Hoosic River watershed, within thirty days of the Effective Date of the Modification Order, BCC shall pay to the Commonwealth of Massachusetts, Division of Ecological Restoration Expendable Trust, 251 Causeway Street, Suite 400, Boston, MA 02114, the amount of \$20,400, with instruction that

said moneys be used for the following purposes: First, to be applied to the purchase price of the lot identified by the Lanesboro Assessor as Map 247-15 and described in the deed recorded with the Berkshire County Registry of Deeds in Book 510, Page 506, which deed appears as Exhibit A hereto ("Lot 15"); Second, if the purchase of Lot 15 is not accomplished within twelve months of entry of the Modification Order, to be used for projects designed to benefit water quality in Cheshire Reservoir, any tributary thereof or any surface water body located within 30 miles of Cheshire Reservoir; provided that no portion of such payment shall be disbursed or otherwise granted directly or indirectly to Clean Water Action. A copy of such payment and instruction shall be provided to Clean Water Action.

3. Paragraph 2 of the Consent Decree is hereby modified as follows:

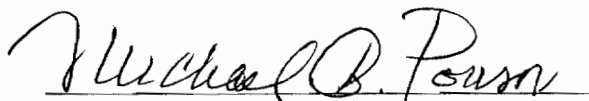
The period of time in which BCC must complete the work identified in Paragraph 2 C, and for BCC to provide the Notice of Completion pursuant to subparagraph 2.C(5), of the Consent Order is enlarged to June 30, 2014.

4. Except for the modifications set forth above, the Consent Decree shall remain unchanged and continue in full force and effect.

EFFECTIVE DATE OF ENTRY OF MODIFICATION ORDER

5. The Effective Date of this Modification Order shall be the earlier of (a) the Court's receipt of notice from the United States Department of Justice that the United States has no objection to entry of the Proposed Order of Modification of Consent Decree, or (b) forty-five (45) days after the receipt of a copy of this Proposed Order of Modification of Consent Decree by the United States Department of Justice.

Approved:


United States District Judge

Dated: January 6, 2014